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Familias Sin Fronteras: Mujeres Unidas Por Su Historia

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FAMILIAS SIN FRONTERAS: MUJERES UNIDAS POR SU HISTORIA*

*Berta Esperanza Hernández-Truyol***

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I. INTRODUCTION

Since the Castro revolution, it is impossible not to think of the existence of two Cubas radically different politically, socially, and economically from each other. One, is the post-revolutionary society created in the actual physical island, a mere ninety miles from the southernmost tip of the United States. This Cuba, Castro's Cuba, has existed for the last forty-two years under a socialist, communist regime imposed by the revolution, whose objectives have been to develop a social and economic rights agenda and reject capitalism, imperialism, and colonialism.¹ In this society, much as in other socialist, communist states, individual freedoms are sacrificed for the good of, and are subordinated to, collective interests. It is the business of the government, and not an individual prerogative, to provide healthcare, education, welfare, food, and work to its citizens, even if it is at the expense of the personal freedom to choose a field of work or field of education.

The other Cuba is purposely dramatically different. Quintessentially represented by the Miami-Cuban exile community, this Cuba views Castro's revolution as a travesty that robbed *cubanas/os* of a beautiful, enchanted island and stalled economic progress to the detriment of the country and its people.² This Cuba embraces capitalism, democracy, and personal freedoms above all else, and it condemns Castro's denial of civil and political rights to those on the island. Freedoms of movement, speech, and association as well as the rights to privacy, to vote, and to travel, all viewed as denied in Castro's Cuba, are freedoms and rights to be protected at all costs.

These are incontrovertible political, philosophical, and ideological differences. Yet for years I have contemplated whether the divergences were, or could be, defining of authentic cubanidad — Cubanness, the Cuban identity. I often have wondered whether the *cubanas/os en la isla* would be really different from those *en el exilio*. In other words, I questioned whether the revolution or exile had succeeded in changing the *cultura cubana* and thus truly created different Cuban societies. After all, save for the Castro period, all Cubans share roots of conquest and

1. See generally FIDEL CASTRO & ERNESTO CHE GUEVARA, TO SPEAK THE TRUTH: WHY WASHINGTON'S 'COLD WAR' AGAINST CUBA DOESN'T WORK (Mary-Alice Waters ed., 1992).

2. See Berta Esperanza Hernández-Truyol, *Out In Left Field: Cuba's Post-Cold War Strikeout*, 18 FORDHAM INT'L L.J. 15, 32-35 (1994) (providing an analysis of economic well-being in pre-Castro Cuba; assessing Castro's impact on "development" through regulation of radio stations, telephones, etc.).

dependency, colonialism, and independence, as well as a shared history of music, dance, language, and family.³

I anticipated that the long historic and cultural ties binding *cubanas/os* across the ninety-mile span of sea would be stronger than any possible differences produced by the dramatically different political regimes under which *cubanas/os en la isla* and *en el exilio* in the United States live. My desire is to explore similarities between the two Cubas to expose points of commonality that could then facilitate conversation across our ostensible political divide.

When my academic interest turned to Cuba, the convergence of the personal and the professional resulted in a desire and perhaps eventually some mutually shared aspiration to visit the island — the place of my birth. Interestingly, when I concretely started to design a visit to Cuba, my lawyer-like rationality ceded to my emotions which vividly accentuated the reality of the existence of two Cubas. How would I feel about visiting my birth country? Would I be considered a real Cuban — raising the issue of the authentic *cubanidad*? Or would I find myself as an “other” in Cuba — a stranger in a territory simultaneously familiar and unfamiliar — much the same as (but at the same time different from) the way I am an “other” within the U.S. borderlands because of my *cubanidad*? Would the accents, music, and food be those to which I was accustomed or would they be foreign and strange? Could I bond with the family I planned to visit even though I barely knew them, or would we live the deep and cavernous divide that separates *cubanas/os* inside and out of the fronteras that constitute the sovereign margins of Cuba?

At the very least, these personal musings raised the issues of whether there exists a Cuban society that is culturally cohesive, whether *cubanidad* is dependent on territorial borders and political ideology, and whether there can be a singular narrative on *cubanidad* that transcends geography and politics. I suspected that, while political and economic differences might result in very different lifestyles and ideologies, social, and cultural tropes might provide some similarities and cultural cohesion.

To test this thesis, I have studied the available, albeit sparse, information on the role of *cubanas* in society. In this essay, I first examine the role of women in Cuban society throughout history. Next, I look at changes in the laws pertaining to women in the post-Revolution era, and then I focus on U.S. laws on equality as they affect all women, with particular attention to their significance to Cuban women within the U.S. borders. Finally, I

3. If indeed the revolution resulted in different Cuban peoples, the issue of authenticity — of true *cubanidad* — would then lead to further interrogations as to whether territorial ties could, alone, ascribe authenticity. However, that is a question for another work.

evaluate the function of culture in defining the reality of Cuban women within the family structure in the island as well as in the United States. The work concludes that culture trumps law and, for better or for worse, traditional cultural assumptions about sex roles, particularly roles within and with respect to the family, have persisted in both Cuban societies. I suspect that further study is likely to reveal additional commonalities with respect to attitudes in matters such as family, race, and sexuality.⁴ These common locations, in turn, can be utilized to build bridges to connect both Cubas. This work concludes with one particular bridge-building proposal that draws on the dedication to family of all Cubans.

II. HISTORY: THE ROLE OF WOMEN

Octavio Paz, in *El Laberinto de la Soledad*, presented the popular image of womanhood that prevails in the Latina/o mind:

*Como casi todos los pueblos, los mexicanos consideran a la mujer como un instrumento, ya de los deseos del hombre, ya de los fines que le asignan la ley, la sociedad o la moral. Fines, hay que decirlo, sobre los que nunca se le ha pedido su consentimiento y en cuya realización participa sólo pasivamente, en tanto que "depositaria" de ciertos valores. Prostituta, diosa, gran señora, amante, la mujer transmite o conserva, pero no crea, los valores y energías que le confían la naturaleza o la sociedad. En un mundo hecho a la imagen de los hombres la mujer es sólo un reflejo de la voluntad querer masculinos. Pasiva, se convierte en diosa, amada, ser que encarna los elementos estables y antiguos del universo: la tierra, madre y virgen; activa, es siempre función, medio, canal. La feminidad nunca es un fin en sí mismo, como lo es la hombría.*⁵

4. See, e.g., Lillian Manzor-Coats, *Performative Identities: Scenes Between Two Cubas*, in BRIDGES TO CUBA/PUENTES A CUBA 253, 256 (Ruth Behar ed., 1995); see generally Alejandro la Fuente, *The Resurgence of Racism in Cuba*, in NACLA REPORT ON THE AMERICAS, May-June 2001, at 29; Derrick Hodge, *Colonization of the Cuban Body: The Growth of Male Sex Work in Havana*, in NACLA REPORT ON THE AMERICAS, Mar.-Apr. 2001, at 20.

5. Author's translation:

Like almost all other peoples, Mexicans consider woman as an instrument, object of masculine desires, object of the ends assigned to her by law, morality, and society. It must be admitted that she has never been asked to consent to these ends and that she participates in their realization only passively, as a "repository" of certain values. Whether as prostitute, goddess, *grande dame* or mistress, woman transmits or preserves — but does not create the values and energies

To be sure, this Paz passage elucidates the bounds of a discussion with respect to what should be the proper location of women in society generally, or of women in Cuban societies more specifically. In the context of family, home, work, or the public sector, the role of women, as presented by Paz, is one of expectations, stereotypes, and subordination that constitute reality for *cubanas*.

Cultural idealization notwithstanding, it is important to note that stereotypical women in Cuba have always shown a strong streak, they have rarely fit the stereotypical feminine weakness or helper mold. Yet, they always have focused on family. So Cuban feminism, tellingly called "*movimiento femenino*," has both strength and family at its core.

Interestingly, and key to this presentation, is that even the role of Cuban women in battle was appreciated in the context of their exalted natural role as mothers. Mariana Grajales — "*La Leona*," the mother of ten soldiers, including Antonio Maceo, one of Cuba's best-known, loved, and respected heroes fought alongside her sons in the war of independence from Spain. She became the archetype and exemplar of motherhood.⁶ Such an image of *la madre patriota* (patriot mother) became an emblem of Cuban sacrifice and endurance.⁷ Significantly, these women warriors, *mambisas*, were the first women in Cuba to own their own property, thereby presenting a challenge to the notion of male authority over family property.⁸

A. Early Legal Changes Favoring Women

Other social changes — or lack thereof — in light of changed legal strictures foretell the laws' lack of social and cultural impact. For example,

entrusted to her by nature or society. In a world made of man's image, woman is only a reflection of masculine will and desire. When passive, a woman becomes a goddess, a beloved one, a being who embodies the ancient, stable elements of the universe: the earth, motherhood, virginity; when active, she is always a function, a means to an end, a vehicle. Femininity, unlike manhood, is never an end in itself.

OCTAVIO PAZ, *EL LABERINTO DE LA SOLEDAD Y OTRAS OBRAS* 57 (1997).

6. ISABEL HOLGADO FERNÁNDEZ, ¡NO ES FÁCIL! MUJERES CUBANAS Y LA CRISIS REVOLUCIONARIA 261 (2000).

7. K. LYNN STONER, FROM THE HOUSE TO THE STREETS: THE CUBAN WOMAN'S MOVEMENT FOR LEGAL REFORM, 1896-1940, 25-26 (1991). Another powerful archetype for Latinas is that of the Mother Mary/Madonna. See *id.* at 6; GLORIA BONILLA-SANTIAGO, BREAKING GROUND AND BARRIERS: HISPANIC WOMEN DEVELOPING EFFECTIVE LEADERSHIP 11 (1992) (emphasis added); PIERRETTE HONDAGNEU-SOTELO, GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION 9 (1994).

8. See STONER, *supra* note 7, at 22.

Cuba's war of independence ended in 1898 with the defeat of Spain — a Cuban victory that would not have been possible without the revolutionary participation of women. Yet, one would expect that such successful participation would be rewarded with correlative legal benefits and protections. Interestingly, these women, who had fought so hard for their country, had to protest the 1901 Cuban Constitution because it ignored the rights of women.⁹ Thus, after the war, female independence fighters returned home and, without new legal protections or recognition of their contributions, fell back into their societally defined roles.¹⁰ Although the *mambisas* were hopeful of social change based on Jose Martí's pronouncements of social justice, their hope quickly fizzled.¹¹ Martí not only failed to emphasize the positions of women in the new society, but also failed to prosecute social injustices affecting women.¹² His sole concession to women was to recognize their wartime contributions.¹³

B. Property and Family Rights

Between 1902 and 1940, Cuban women's organizations formed and were central to effecting myriad legal changes for women and their condition.¹⁴ These included changes in property rights; family laws such as divorce, adultery, and maternity laws; and finally the right to vote.¹⁵ Never, however, did women put aside their focus on morality and the sanctity of motherhood; rather, these were deemed the causes of the movement.¹⁶

The Cuban feminists who fought for these rights were far from representative of Cuban society as a whole.¹⁷ The Cuban feminists were white, middle to upper class, and educated. Of these women, about 40% were mothers, 42% were or had been married, 60% had at some time been employed, 75% had graduated from a university, 33% had postgraduate degrees, and every single one had at least one servant.¹⁸ These women were the product of a Cuban culture that, reflecting many years of Spanish influence, dictated that women were not to work, but were supposed to

9. *Id.* at 33.

10. *Id.*

11. *See id.* at 28-29.

12. *Id.*

13. *See* STONER, *supra* note 7, at 29.

14. *See id.* at 25-39.

15. *See id.* chs. 2, 6.

16. *See id.* at 33.

17. *See generally id.* ch. 4 (providing a detailed background for and demographics of the feminists).

18. STONER, *supra* note 7, at 78, 80.

stay at home and prepare for marriage. Even if a woman did work, it was understood that it was temporary and once she married, she would give up her job. However, these cultural aspirations and expectations were different for black, mulata, and poor white women who had no option but to leave home and work.¹⁹

C. *The Rights to Vote and to Equality*

The legal advances in the Cuban Constitution did not alleviate the profound economic and political subordination of women in education and employment.²⁰ Even when women entered the work force, they did so in fields which were deemed appropriate and acceptable for women.²¹ Traditionally, these pink collar jobs were low-paying and low-status.²² Finally, women may have had a constitutionally dictated equal right to hold public office, but women rarely ran for such office and few who ran were elected.²³ Thus, although Cuban women apparently had very strong legal rights on paper, the cultural tropes remained unchanged from the vision of Octavio Paz.

III. THE CASTRO REVOLUTION AND BEYOND — WOMEN AND EQUALITY

In 1952, after Batista's overthrow of the government, the feminists dispersed to various political groups to fight against the dictator.²⁴ But Castro, in his quest to lead the government of the island, urged groups of women to consolidate and form a united front of women. Women accepted the challenge and, in so doing, played a fundamental role in the positioning

19. See *id.* at 3.

20. See Susan Kaufman Purcell, *Modernizing Women for a Modern Society: The Cuban Case*, in *FEMALE AND MALE IN LATIN AMERICA* 257, 260-61 (Ann Pescatello ed., 1973); *WOMEN: CHALLENGES TO THE YEAR 2000*, at 45 (U.N. Report 1991) (The United Nations has reported that "[w]hereas under socialist systems women are relatively less confined to low level, pink ghetto jobs, they are still predominant in occupations that are poorly paid and do not require educational or technical qualifications."); *WORKING WOMEN IN SOCIALIST COUNTRIES: THE FERTILITY CONNECTION* 200-01 (Valentina Bodrova & Richard Anker eds., 1985); MARGARET E. LEAHY, *DEVELOPMENT STRATEGIES AND THE STATUS OF WOMEN: A COMPARATIVE STUDY OF THE UNITED STATES, MEXICO, THE SOVIET UNION, AND CUBA* 93 (1986).

21. Purcell, *supra* note 20, at 261.

22. See, e.g., LEAHY, *supra* note 20, at 92-93.

23. *Id.* at 92.

24. FERNÁNDEZ, *supra* note 6, at 265.

of the revolution.²⁵ Women played numerous and varied roles in the revolutionary movement. They raised funds, acted as teachers, recruited and created sympathy for the guerilla movement, took care of the wounded, transported arms and documents, and organized revolutionary groups.²⁶ Just as in the Cuban war for independence from Spain, once the armies were established, women transported weapons and messages, made uniforms, placed bombs, gathered medicines, hid in the mountains, visited the guerillas in jail, and took care of the wounded.²⁷ Although some opposed active female participation in the fighting, they had Castro's full support, noting that "there are men who ran, M-1 and all, but we [did] not have a single example of one of the *Mariana Grajales* women [running] from combat."²⁸

In his first address to the nation, Castro noted the need to end discrimination against the participation of women in the labor force. Shortly thereafter, the Labor Ministry started to more strictly enforce labor legislation regarding women and to pass new regulations addressing the right of pregnant women to their jobs. Castro designated a move toward equality for women as "a revolution within the Revolution."²⁹ In order to institutionalize the place of women in the revolution, Castro created the Federación de Mujeres Cubanas (Federation of Cuban Women), the FMC, in August 1960.³⁰

A. Post-Castro Women's Participation in Education, Labor, and Politics

While in Castro's Cuba women as a whole have fared well in formal education,³¹ at times gender roles have interfered with their enjoyment of full equality.³² In fact, in 1984, the government, using a rationale grounded on gender stereotypes, imposed quotas specifically designed to limit the

25. Berta Esperanza Hernández-Truyol, *Women in Contemporary Cuba*, in *WOMEN IN THE THIRD WORLD: AN ENCYCLOPEDIA OF CONTEMPORARY ISSUES* 618, 620-23 (Nelly P. Stromquist & Karen Monkman eds., 1998).

26. *See id.* at 621.

27. *See, e.g.,* FERNÁNDEZ, *supra* note 6, at 266-67.

28. Diana M. Riveira, *Women's Legal Advances in Cuba*, ch. II, 8-9 (1989) (unpublished Masters Thesis, University of Miami) (on file with author) (explaining that the Mariana Grajales troops saw action in about twenty important battles, and once the enemy surrendered they took on peacetime tasks (emphasis added)).

29. *See* Purcell, *supra* note 20, at 258.

30. *See id.* at 262.

31. *See* FERNÁNDEZ, *supra* note 6, at 83, 86.

32. *See* Hernández-Truyol, *supra* note 25, at 622.

number of women allowed to attend medical school.³³ The government explained that the substantial responsibilities that women had to their families would make it difficult for them to perform the necessary extended overseas travel to render medical assistance.³⁴ Thus, it was important to train men who could serve abroad.³⁵

B. *El Período Especial*³⁶

Throughout the revolution, however, the role of women in families, homemakers and child caretakers, remained unchanged. They worked outside the home, but still did the shopping, cooking, cleaning, and child-raising. The burdens that formal government policies and cultural traditions placed on women were exacerbated in Cuba with *el período especial*, in which the shortages of resources fell mostly on the women who had to run their homes with less. Women disproportionately suffered because of their unchanging primary roles as mothers, wives, and homemakers.³⁷

IV. U.S. EQUALITY LAWS — CUBANAS IN THE DIASPORA

The basic right to equality, including sex equality, in the United States is found in the Fourteenth Amendment of the U.S. Constitution.³⁸ Significantly, the fact that it is an amendment indicates that the original U.S. Constitution did not contemplate a concept of equality. Even the Fourteenth Amendment itself, on which sex/gender equality rights are now grounded, was originally intended to eliminate race, not sex, discrimination.

In fact, a late 1800s case vividly presents the gendered view of the proper location of women in the United States much like Octavio Paz did in his work on the *mujer latina*.³⁹ In *Bradwell v. Illinois*, the U.S. Supreme Court upheld the rejection by Illinois of an application by Myra Bradwell

33. *Id.*

34. *Id.*

35. *Id.*

36. After the fall of the Soviet Union and the consequent end of financial aid to Cuba, the island suffered a serious economic downturn, remembered as “El Período Especial” — the Special Period. See FERNÁNDEZ, *supra* note 6, ch. II (for an overview of *el período*).

37. See generally Sergio Diaz-Briquets, *The Cuban Labor Force in 1981 and Beyond*, in THE CUBAN ECONOMY: DEPENDENCY & DEVELOPMENT 99-103 (Antonio Jorge & Jaime Suchlicki eds., 1989) (explaining trend throughout Cuba’s economic history of denying women employment).

38. U.S. CONST. amend. XIV.

39. See generally *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872); PAZ, *supra* note 5.

to practice law.⁴⁰ Most revealing is the Court's honest, albeit disturbing, attribution of the proper, and separate, sphere for men and women:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.⁴¹

It was not until 1971 that the Fourteenth Amendment was interpreted to prohibit state laws that created different rights for men and women.⁴²

Notwithstanding the law, however, in the United States, as in Cuba, the separate sphere of women is still a reality. A recent study reports that attitudes toward working mothers have not changed, even in light of the reality that fifty-six percent of women with infants and two thirds of women with preschool children work outside the home.⁴³ Sixty-eight percent of fathers and sixty-nine percent of mothers agreed with the following statement: "It is much better for the family if the father works outside the home and the mother takes care of the children."⁴⁴ Echoes of *Bradwell*⁴⁵ resonate two centuries later.

Cuban women living in the United States are protected and governed by U.S. equality laws. Yet the Paz vision still prevails in *comunidades Latinas*.⁴⁶ The cultural expectations and interpretations of Latinas mandate that they be feminine, mothers, and wives. Society mandates that their most

40. *Bradwell*, 83 U.S. at 138-39.

41. *Id.* at 141 (Bradley, J., concurring).

42. *Reed v. Reed*, 404 U.S. 71, 76 (1971).

43. See Tamar Lewin, *Study Finds Little Change in Working Mothers Debate*, N.Y. TIMES, Sept. 10, 2001, at A26.

44. *Id.* (quotation marks omitted).

45. *Bradwell*, 83 U.S. at 130.

46. PAZ, *supra* note 5.

important aspirations are to get married, have children, and serve their families.⁴⁷

The *cultura Latina*, including its predominantly Catholic religious mandates, develops the Latina identity in the context of the "ideal woman" fabricated in the mold of the Virgin Mary,⁴⁸ a construct called *marianismo* that "glorifie[s] [Latinas] as strong, long-suffering women who ha[ve] endured and kept Latino culture and the family intact."⁴⁹ Culture teaches Latinas to be *pulcra* (pure) and passive; we are discouraged from activity and aggressiveness. We also are taught early, and severely, the meaning of *respeto* (respect): we must be deferential to our elders and to all the men in our lives — fathers, brothers, husbands, uncles, and cousins.⁵⁰ The Latina is supposed to be self-sacrificing, a virgin mother, a saint, superhuman. These are the roles taught to and adopted by latinass en *el exilio*.

V. CUBANAS INSIDE AND OUT

In this part, I will look at the present location of cubanass en *la isla y en el exilio*. As I contemplated when I embarked on this study, the condition of cubanass across the ninety-mile span of water separating them is remarkably similar.

A. Cubanass en La Isla

The revolutionary equality notions, mostly encoded in law, were noble and perhaps partly realized insofar as one considers the improvements in health, education, and welfare discussed above. In reality, disparities in employment and government policies persist. The revolutionary

47. See generally RUTH BURGOS SASSCER & FRANCISCA HERNÁNDEZ GILES, *LA MUJER MARGINADA POR LA HISTORIA: GUÍA DE ESTUDIOS* (1978).

48. Significantly, 85% of Latinass consider themselves Catholic, and many hold political and social views that are influenced by religious doctrine. See BONILLA-SANTIAGO, *supra* note 7, at 15. The imagery of the Virgin Mary as the female ideal is firmly rooted in and praised by culture. As one author stated, "Some Chicanass are praised as they emulate the sanctified example set out by [the Virgin] Mary. The woman par excellence is mother and wife. She is to love and support her husband and to nurture and teach her children. Thus, may she gain fulfillment as a woman." *Id.* at 11 (quotation marks omitted).

49. *Id.* (emphasis added); see also HONDAGNEU-SOTELO, *supra* note 7, at 9 ("The ideological corollary [to machismo] for women, . . . *marianismo* (marianism), is modeled on the Catholic Virgin Madonna, and prescribes dependence, subordination, responsibility for all domestic chores, and selfless devotion to family and children." (citation omitted)).

50. See SASSCER & GILES, *supra* note 47, at 85 (observing that women's most important function is to marry and serve her family).

government encouraged women to join the labor force because it considered housewives unintegrated and thought that they would raise children that also would be unintegrated.⁵¹ Also, engaging in paid employment was deemed to be a key to the emancipation of women.⁵²

While domestic tasks are seen as unproductive and unpleasant, women still bear a double burden recognized by the FMC in its 1990 Congress, working outside of the home all day, and then working at the home and caring for their children and husbands at night.⁵³ The law in Cuba requires men's equal participation in housework and childcare.⁵⁴ This mandate is even embedded in the marriage ceremony. The reality, however, as studies have shown, does not comport with the law. For example, available empirical data shows that working women have an average of only 2 hours and 59 minutes of free time a day.⁵⁵ Women spend 6 hours and 29 minutes at their job, and then 4 hours and 4 minutes in domestic chores.⁵⁶ In contrast, men, on the average, spend 7 hours and 48 minutes working at their jobs, and then only 32 minutes on housework,⁵⁷ giving them more free time.

When family emergencies arise, or when family related matters require attention, it is only women's, not men's, time at work that becomes dispensable. Women, but not men, get time off work to care for family or to stand in food lines.⁵⁸ "[M]en are viewed as inherently unreliable regarding family responsibilities" and women continue to be seen primarily as mothers, wives, and homemakers.⁵⁹

As noted earlier, *el período especial* underscored the polarity of persisting gender roles. The result of the persistence of traditional roles is that cultural tropes trump paper rights. Thus, although the government has promulgated major legal changes designed to lift the double burden of work and homemaking on women,⁶⁰ the traditional views behind the perpetuation

51. Lois M. Smith & Alfredo Padula, *The Cuban Family in the 1980s*, in TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S 177 (Sandor Halesbsky & John M. Kirk eds., 1990).

52. *Id.*

53. *Id.*

54. *See id.* at 177-78.

55. *See* Riveira, *supra* note 28, ch. II, 34.

56. *Id.*

57. *Id.*

58. *See* Smith & Padula, *supra* note 51, at 179.

59. *Id.* at 178.

60. *See, e.g.*, FAMILY CODE (CUBA), Law No. 1289, Feb. 14, 1975, arts. 24, 26 (Official Publication of the Ministry of Justice 1975) (providing that marriage partners have "equal rights and duties" and that "both parties must care for the family"); *id.* art. 27 (stating that both spouses must contribute to the needs of the family by sharing household duties and childcare, regardless of whether only one or both partners work outside the home); *id.* art. 28 (stating that both partners

of the burden on women remained stubbornly unchanged as the laws and policies behind them were based on the assumption that a cubana's place is in the home.⁶¹

B. *Cubanas en el Exilio*

Initially, it is important to note that there is a dearth of information about the condition of cubanas *en el exilio*. We know that Cuban men and women together have higher earnings and levels of education than other Latina/o groups in the United States.⁶² We also know that *Latinas* have lower earnings and education than *Latinos*.⁶³ Thus, it is not surprising that *cubanas* earn less and attain lower levels of education than *cubanos*, although more recent numbers show that women are surpassing men in some areas of education such as the conferral of masters degrees.⁶⁴ These results, of course, are predictable if the cultural sex-role mandates are in place as women must devote their primary attention to home and family at the expense of work and individualism.

A significant factor that distinguishes between *cubanas en Cuba* and *cubanas en el exilio* is the migration experience, which is well established to have an impact on gender roles and sexuality.⁶⁵ With migration and the stresses that migration effects, communities often rely on the enforcement of traditional gender roles for continuity of their life experiences. Significantly,

sexual and gender role[s] . . . of women serve a larger social function beyond the personal. They are used by enemies and friends alike as proof of the morality — or decay — of social groups or nations. In most societies, women's sexual behavior and their

"have the right to practice their profession or skill"); Smith & Padula, *supra* note 51, at 179 (discussing 1974 Maternity Law); FERNÁNDEZ, *supra* note 6, at 92-94 (describing childcare facilities called children's circles aimed at enabling women's workforce participation).

61. See Smith & Padula, *supra* note 51, at 178.

62. See Berta Esperanza Hernández-Truyol, *Building Bridges-Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 394-95 (1994); see also Uva de Aragón, *La Mujer Cubana: Historia e Infrahistoria (El Exilio)*, in LA MUJER CUBANA: HISTORIA E INFRAHISTORIA 79, 81-83 (2000).

63. Berta Esperanza Hernández-Truyol, *Las Olvidadas-Gendered in Justice/Gendered Injustice: Latinas, Fronterás and the Law*, 1 J. GENDER RACE & JUST. 353, 358-59 (1998).

64. Aragón, *supra* note 62, at 83, 85.

65. OLIVA M. ESPÍN, *WOMEN CROSSING BOUNDARIES: A PSYCHOLOGY OF IMMIGRATION AND TRANSFORMATIONS OF SEXUALITY* 5 (1999).

conformity to traditional gender roles signify the family's value system.⁶⁶

Frequently, as has happened with Cubans, the home culture becomes idealized, with its values, characteristics, and customs — including strictly defined and ascribed gender roles — being representative of something better about the culture that was left behind than that which exists in their new country of residence.⁶⁷ Thus, migrants have a strong pull against loss of cultural identity effected by migration and the desire to keep traditions in its wake.⁶⁸ As one might anticipate, in light of the mandated role of women as family caretakers, traditions are primarily preserved by women who are seen, as the quote of Paz confirms, as the vessels for the transmission of culture.⁶⁹

An interesting fact concerning *cubanas en el exilio* is that their rate of participation in the work force is higher than other Latinas and higher than their Angla and African-American female counterparts.⁷⁰ In part, this labor force participation ironically is made possible because of the traditional family patterns which signify that older family members, typically grandmothers, are present in the household and take over the maternal childcare and homemaking obligations such as cooking and cleaning.⁷¹ Thus while *cubanas en el exilio* have turned to work outside the home, the traditional lifestyle of multiple generations under one roof has enabled the preservation of cultural gender roles.

To be sure, the increased participation of *cubanas* in the labor force defied the norm dictating that married women should not work outside the home because it constitutes a show of independence which is an affront to male authority.⁷² Notwithstanding these cultural mandates, *cubanas en el exilio* justify their labor outside the home on the economic exigencies of exile. Thus, acts that would have been inappropriate in Cuba become befitting of, and respectable for, the female sex because they are contextualized within their proper sphere of caring for and taking care of

66. *Id.* at 6.

67. *Id.* at 23; see also ANA MENÉNDEZ, IN CUBA I WAS A GERMAN SHEPHERD 102 (2001) (for an interesting fictionalized viewpoint).

68. See generally MENÉNDEZ, *supra* note 67.

69. See PAZ, *supra* note 5; see also ESPÍN, *supra* note 65, at 146, 149. According to Espin, "[b]ecause women are expected to preserve culture and traditions, immigrant women who are mothers are expected to be the carriers of culture for their children in the new country." *Id.* at 149.

70. Aragón, *supra* note 62, at 82.

71. *Id.*

72. *Id.* at 85.

family. Thus, employment outside the home is transmogrified into the way mothers and wives fulfill their proper obligation to their families.⁷³

Cubanas en el exilio, much like their counterparts in Castro's Cuba, have a double burden of work both outside and inside the home. After she arrives home after a long day's work, a *cubana en el exilio* still is responsible for the duties in her proper sphere: preparing dinner, doing laundry, helping schoolchildren with homework, caring for the older members of the extended family household, and serving *cafecito* to her husband and his friends "who in the living room would discuss how to topple Castro."⁷⁴ Thus, *las mujeres cubanas en el exilio*, much like their counterparts in Castro's Cuba, remain bound by the *marianista* canon that still today dictates that women take care of all in the home (parents, in-laws, husband, children, dogs, cats, and plants) and transmit cultural values as well as work in the productive labor market.⁷⁵

VI. CONCLUSION: EQUALITY, CULTURE, AND POSSIBILITIES FOR THE FUTURE

Both Cubas retain and embrace cultural tropes that render the Cuban world a gendered place. In both instances, the consequences are double standards and double duties for women. These results fly in the face of the rule of law regardless of where one looks. In Castro's Cuba and in the United States, equality is a constitutional mandate. In the international realm, protections for sex equality and prohibitions against discrimination are often tempered by alluding to the protections of culture, which often is the veil behind which discrimination and inequality lurk.⁷⁶

With respect to women in their family roles, the two Cubas are more alike than they are different. Notwithstanding the laws, women still remain bound by cultural tropes not of their making, but for which they must take responsibility and in which they even must take pride. This is not to suggest that cultural norms should always be eradicated. Cuban women have played key roles in every revolutionary movement and global initiative on the island, from the struggles to obtain independence from Spain to fighting

73. *Id.* at 86.

74. *Id.* English in quote is author's translation of: "que discutía en la sala con los amigos cómo tumbar a Castro."

75. See Aragón, *supra* note 62, at 87; ESPÍN, *supra* note 65, at 5-9; PAZ, *supra* note 5, at 57.

76. See generally Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights — Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605 (1996); Berta Esperanza Hernández-Truyol, *Human Rights, Globalization, and Culture: Centering Personhood in International Narrative*, in MORAL IMPERIALISM: A CRITICAL ANTHOLOGY 353 (Berta Esperanza Hernández-Truyol ed., 2002).

Castro's revolution to now challenging its gender, unequal policies to being economic caretakers en el exilio. In the historical process, *las mujeres cubanas* have been instrumental in changing the governing laws — ranging from property law to family law including marriage, divorce, maternity, and childcare, as well as laws on enfranchisement and labor laws. A major historical impetus behind the participation of women in public life and social movements has been the preservation and well-being of the family, as exemplified by Mariana Grajales *la madre patriota*.⁷⁷

Because of the centrality of family to Cubans on both sides of the Florida Straits, I want to explore whether it is an idea that allows for constructive explorations and conversations about building bridges between our communities. Notwithstanding geographic, political, and economic differences, *cubanas/os* are still one in our *cubanidad* with respect to our love of and dedication to *familia*. Such a novel problem that threatens the integrity and well-being of families in both Cubas may serve to encourage all *cubanas/os* to embrace a *proyecto para preservar y proteger la familia* (project to preserve and protect the family).⁷⁸

Consider the following hypothetical which captures the essence of an increasingly common scenario. A parent — typically a father — leaves the island and a family behind. The parent resettles in the United States, where s/he becomes established, and may even start a new family. The parent in the United States quickly forgets about *la familia en la isla* and either chooses to end or simply loses contact with family members. Notwithstanding Cuban family law which provides that a parent who leaves the island still has a child support obligation to the family left behind,⁷⁹ the parent who finds himself in the United States may not give the Cuban obligation of support another thought. To be sure, as the discussion below will show, even if a parent were well-meaning, dedicated, and wanting to fulfill their support obligations, they would encounter obstacles in meeting them because of the legal framework of U.S.-Cuba relations.⁸⁰ Of course, however, a parent unwilling to satisfy such obligations presents the most difficult case.

A version of the abandoning parent scenario was played out in the high profile case of Cuban defector-turned-major league baseball player Rey Ordoñez. In 1993 while in Buffalo, N.Y., as a member of the Cuban baseball team competing in the World University Games, Ordoñez executed

77. See *supra* notes 6-7 and accompanying text.

78. Yvette Murphy, who unfortunately could not attend this conference, was going to address the issue of family support. I thank her for her insights.

79. See FAMILY CODE (CUBA) arts. 26-27.

80. See *infra* notes 94-102 and accompanying text.

his plan to defect from Cuba and remain permanently in the United States by casually walking out of the athletes' village and jumping into a waiting car.⁸¹ He later signed a \$19 million, four-year contract with the New York Mets baseball team.⁸² Four days prior to leaving Cuba, Ordoñez had divorced his wife and, subsequently, the Cuban courts ordered him to pay \$1.50 per month in support based on his annual salary (in Cuba) of \$1,416.⁸³ When his ex-wife was finally able to immigrate to the United States from Cuba in May of 2000, she sought to increase the support payments to almost \$8,000 per month based on his lucrative baseball contract, which far exceeded the income on which the original order of support was based.⁸⁴ Although the case did go to court, it was eventually settled out of court, with Ordoñez agreeing to pay \$6,500 per month in child support,⁸⁵ as well as \$30,000 in back child support and \$25,000 for the legal fees of his ex-wife.⁸⁶ Significantly, even the much higher figure of the U.S. settlement is low by U.S. standards.⁸⁷

Some noteworthy differences exist between the Ordoñez case and my suggested hypothetical. For one, in the Ordoñez case both parents had immigrated to the United States and the ex-wife successfully negotiated an increase in Ordoñez's child support obligations here. As the case ultimately was privately settled, we do not have a court opinion analyzing the basis for the increase in payment obligations. But, as will be discussed below, while a court may well have ordered increased payments due to Ordoñez's changed economic situation, it is unlikely such a change would have resulted from an enforcement and modification of the existing Cuban court

81. *Cuban Defector Faces Brave New World*, HOUSTON CHRONICLE, July 16, 1993, at 13 [hereinafter *Cuban Defector*].

82. Elliot Harris, *Payback: Cuban Ex-Wife Throws Ordonez a Curve Ball*, CHICAGO SUN-TIMES, Feb. 20, 2001, at 101.

83. *Id.*; *Cuban Defector*, *supra* note 81.

84. Harris, *supra* note 82.

85. Steve Campbell, *2001 Was a Tasteless Odyssey*, TIMES UNION (ALBANY, NY), Dec. 30, 2001, at D1.

86. T.J. Quinn, *Rey to Add to Child Support*, DAILY NEWS (NEW YORK), May 23, 2001, at 59.

87. It is interesting to note that the ex-wife only requested \$8000/month in child support, which is only 2.02% of Ordoñez's Mets salary (\$19 million for 4 years), and eventually settled on \$6500 (1.64%). U.S. courts normally award significantly larger percentages of income. For example, in Florida, courts generally award an average support payment of 22%. Harris, *supra* note 82.

order. Rather, the court would likely base the increase on its own jurisdiction under state law to protect the best interests of the child.⁸⁸

Secondly, while both parties in the Ordoñez case were physically present in the United States, in any litigation it is much more difficult for any person in one country to enforce obligations against a person in a different geographic location. In this regard, it is especially onerous for a parent who remains in Cuba⁸⁹ to enforce child support obligations against a parent who moves to the United States because of the U.S. legal framework limiting U.S.-Cuba relations.⁹⁰ Consequently, it is important to explore whether there are other ways in which enforcement of the obligations of parents to take care of their children can be pursued. I suggest that working together to seek solutions to the problem of child support enforcement, including obtaining reformation of laws that presently represent obstacles in that regard, can be envisioned as a shared goal of *familias cubanas*.⁹¹

In the hypothetical scenario, if the original couple had divorced in Cuba, jointly owned assets would have been sold and divided evenly.⁹² Thereafter,

88. See, e.g., *Zalduendo v. Zalduendo*, 45 Ill. App. 3d 849 (1977); *Fantony v. Fantony*, 21 N.J. 525 (1956).

89. Deadbeat dads are rare in Cuba because divorced spouses are required to "pay a percentage of their salary for child support until the child graduates from the university." See Stephanie Murphy, *Divorce 'Just Paperwork' in Cuba*, COX NEWS SERVICE, May 8, 2001.

90. Once in the United States, the migrating parent becomes subject to strict laws on child support of a spouse and any children who also reside in the United States. The U.S. courts have upheld the constitutionality of the Child Support Recovery Act of 1992, 18 U.S.C. § 228, which criminalizes the failure of an out-of-state parent to pay child support. See *United States v. Mussari*, 95 F.3d 787, 790 (9th Cir. 1996). It is unlikely at this point, because of economic conditions, that a spouse in the United States would seek to enforce support from a spouse who remains in Cuba. However, this scenario, if it occurred, would also be fraught with many of the same difficulties as the representative of the U.S. spouse still would require a license to work in and travel to Cuba for any necessary proceedings.

91. See Murphy, *supra* note 89.

92. FAMILY CODE (CUBA) art. 38; see also DEBRA EVENSON, *REVOLUTION IN THE BALANCE: LAW AND SOCIETY IN CONTEMPORARY CUBA* 181 (1994). It should be noted that a U.S. state court would honor a Cuban court divorce decree that was issued by a court with proper jurisdiction. See, e.g., *Pawley v. Pawley*, 46 So. 2d 464 (Fla. 1950) (recognizing Cuban divorce decree obtained on proper substituted service). On the other hand, Cuba would not recognize a U.S. court's divorce decree as divorces obtained abroad by Cuban nationals are only "valid in Cuba as long as the [C]uban consulate in the country where it was granted certifies that it was substantiated and granted according to the laws of that country," and Cuba has no consulate in the United States. FAMILY CODE (CUBA) art. 64. However, there is no reciprocity requirement in the U.S. Restatement (Third) of the Foreign Relations Law Section 481. "A judgment otherwise entitled to recognition will not be denied recognition or enforcement because courts in the rendering state might not enforce a judgment of a court in the United States if the circumstances were reversed." RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 481 (1987).

under Cuban law, primary custody would typically be awarded to the mother, and child support payments would be based on need and the income of the father.⁹³ For example, in the Ordoñez case these considerations resulted in the Cuban court ordering \$1.50 per month child support payment based on the salary of the father of \$118 per month (0.78%).⁹⁴

Returning to the hypothetical scenario, it is noteworthy that the minor children remaining in Cuba are still under *patria potestad*, the Cuban legal concept of parental responsibility to the child which by express legal mandate is shared by both parents.⁹⁵ However, neither the Cuban Family Code nor U.S. laws address the complex issue of collecting child support when a parent leaves a Cuban family behind and moves to the United States (or elsewhere). Further, U.S. laws, particularly the U.S. embargo on Cuba,⁹⁶ started in the 1960s under the Trading with the Enemy Act⁹⁷ and strengthened in 1992 by the Cuban Democracy Act⁹⁸ and in 1996 by the Helms-Burton Act,⁹⁹ create a legal maze to be managed when analyzing ways to enforce any child support obligation once a parent leaves Cuba and moves to the United States. The legal difficulties created include problems faced by a U.S. lawyer who seeks to represent a Cuban national in U.S. courts.¹⁰⁰

First, even if a formal order of child support from a Cuban court exists, comity¹⁰¹ considerations influence whether U.S. courts will enforce the

93. FAMILY CODE (CUBA) arts. 57, 59; Smith & Padula, *supra* note 51, at 181.

94. Harris, *supra* note 82; *Cuban Defector*, *supra* note 81.

95. See, e.g., FAMILY CODE (CUBA) arts. 82-87; *id.* art. 92 (describing *patria potestad* being terminable in only four prescribed circumstances: 1) death of parent or child, 2) coming of age of child, 3) marriage of minor child, or 4) adoption of child).

96. The U.S. embargo is based on the Trading With the Enemy Act of 1917. Trading With the Enemy Act of 1917, ch. 106.40 Stat. 411 (1917), *as amended* (1941-76). When the Act was repealed, the U.S. embargo was grandfathered in. 50 U.S.C. App. § 5(b); see generally, Berta E. Hernández-Truyol, *Sanctions and Sovereignty: Analysis of the Embargo Under International Legal Norms*, 215 N.Y. L.J. S4 (1996).

97. 40 Stat. 411 (1917), *as amended* (1941-76); 50 U.S.C. App. § 5(b) (allowing extension of the U.S. embargo annually by presidential action).

98. Cuban Democracy Act of 1992, Pub. L. 102-484, 106 Stat. 2575 (codified as amended at 22 U.S.C. §§ 6001-10 (1996)).

99. Helms-Burton Act, Pub. L. 104-114, 110 Stat. 785 (codified as amended at 22 U.S.C. § 6021-24 (1996)) (officially called the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act).

100. See *infra* notes 101-103 & accompanying text.

101. *Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895)

'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition

judgment.¹⁰² Comity, as well as express statutory enactments such as the Uniform Foreign Money-Judgments Recognition Act,¹⁰³ may permit the enforcement of foreign judgments. However, the Act expressly includes the enforcement of “a judgment for support in matrimonial or family matters.”¹⁰⁴ Notwithstanding comity principles and the Foreign Judgment Recognition Acts, in part because of the lack of relations with Cuba¹⁰⁵ and also because of the typically much lower money amounts of awards entered

which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Id.

102. See, e.g., *Popper v. Popper*, 595 So. 2d 100 (Fla. 1992) (holding that “[w]hen the out-of-state decree is one entered by the court of a foreign nation . . . the Florida court has discretion as to whether to recognize it and give it effect — a matter of ‘comity.’” (citing *Pawley*, 46 So. 2d 464) (recognizing Cuban divorce decree obtained on proper substituted service in Cuba and upholding, based on comity, a husband’s Cuban divorce decree in an action for alimony, unconnected with divorce, based upon reasoning that a divorce, while dissolving marital status, may not extinguish all obligations incidental to marital status); see also *Hachez v. Hachez*, 1 A.2d 845, 847 (1938) (noting that “it is now the generally accepted rule, sometimes said to be grounded in what has been termed ‘comity between nations,’ that . . . a decree of a foreign court of competent jurisdiction awarding custody of a minor child to either parent is enforceable in other jurisdiction”); *Quintana v. Quintana*, 101 N.Y.S. 2d 593, 594 (1950) (holding on husband’s action for annulment that divorce decree by Cuban court is binding on the parties but custody decree was ineffective to award wife custody of child or to require husband to pay child support because it is “well established law that the decree of the foreign court as to custody of the child and support thereof is ineffective where the child was without the jurisdiction of the foreign court”). But see *Fantony v. Fantony*, 21 N.J. 525, 533 (1956) (refusing to recognize a Cuban custody decree by relying on New Jersey policy of protecting the interests of children domiciled in the state and noting that recognition of judgment based on comity “is subject generally to two conditions: (1) that the foreign court had jurisdiction of the subject matter; (2) that the foreign judgment will not offend the public policy of our own State”); *Parker v. Parker*, 21 So. 2d 141 (Fla. 1945), *cert. denied* 326 U.S. 718 (1945) (refusing to recognize a divorce decree issued in Cuba because the wife’s due process rights were violated); see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 482 (listing as “Grounds for Nonrecognition of Foreign Judgments” including where procedures were not “compatible with due process of law” or where the judgment is not compatible with the public policy of the state).

103. AMERICAN BAR ASSOCIATION, UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (1963). Currently, twenty-five states have adopted the Act.

104. See, e.g., ALASKA STAT. § 09.30.170(2) (Michie 2002).

105. U.S. courts have been concerned about the effect of comity on foreign policy decisions. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (expressing the opinion that courts should tread carefully when their “actions may hinder rather than further this country’s pursuit of goals both for itself and for the community of nations as a whole in the international sphere”).

by Cuban courts due to the economic location of that country,¹⁰⁶ existing U.S. law does not facilitate enforcing support obligations created by Cuban law.

One U.S. court that confronted the support issue specifically refused to uphold an order by the Cuban court for child support and alimony. In *Zalduendo v. Zalduendo*,¹⁰⁷ an Illinois court that relied on the Uniform Foreign Money-Judgment Recognition Act held, specifically with respect to a Cuban divorce decree that was silent on issue of child support, "that provisions in a foreign decree regarding child support or alimony are unenforceable in Illinois."¹⁰⁸ *Zalduendo* differs from the suggested hypothetical because both Cuban nationals were already in the United States and before a U.S. court. Nonetheless, the Illinois court decided that while "the Uniform Foreign Money-Judgments Recognition Act does not preclude a court of this state from [r]ecognizing a decree of divorce rendered by a foreign country, the Act cannot . . . serve as a basis for allowing a court in this state to add provisions to a foreign decree which would have been unenforceable had they been placed in the original decree."¹⁰⁹ Thus, the Illinois court concluded it lacked the power to enforce a decree issued by a Cuban court, and, therefore, found the ex-husband was not under obligation to pay alimony.

Interestingly, the circuit court took a different approach to the issue of child support. Specifically, one of the issues the *Zalduendo* court considered was "whether the circuit court has jurisdiction to award child support on a divorce decree entered in a [foreign] country where the decree made no provision for such support."¹¹⁰ Having decided that the Act on its face precludes enforcing a "judgment for support in matrimonial matters,"¹¹¹ the circuit court needed to find "some other jurisdictional basis to sustain an award of child support"¹¹² that had been made in earlier proceedings. The circuit court found no statutory basis for awarding child support, but found jurisdiction to decide the issue "in the common law

106. Exemption of judgments for support in matrimonial or family matters is based on the courts desire "to acknowledge [such judgments'] unique status and treatment and leave them to existing law, which is . . . quite generous" in the United States as compared to most foreign countries. *Ackerman v. Ackerman*, 676 F.2d 898, 902 (1982). In the *Ordoñez* case, the ex-wife after arriving in the United States sought less than 5% of her ex-husband's income, compared to the 22% typically awarded in the United States. Harris, *supra* note 82.

107. 45 Ill. App. 3d 849 (1977).

108. *Id.* at 854.

109. *Id.*

110. *Id.*

111. *Zalduendo*, 45 Ill. App. 3d at 854.

112. *Id.* at 855.

under the plenary jurisdiction of courts of equity over the persons and estates of minors and under the provisions of article II, section 19 of the Illinois Constitution.”¹¹³

Comity and other obstacles, such as statutory norms making enforcement of foreign judgments of support in matrimonial or family matters, render it difficult if not impossible to effect the enforcement of Cuban judgments of support in the United States. In addition, other obstacles make representing a citizen of Cuba residing on the island cumbersome, if not impracticable, for a lawyer in the United States. For one, a U.S. attorney would have to obtain a special license granting permission to represent a Cuban national living in Cuba.¹¹⁴ Access and travel to Cuba are severely restricted, and consequently it is unlikely that regular visits to a client would be permissible under the intense travel restrictions set out in the Cuban Asset Control Regulations.¹¹⁵ Challenges to these regulations, claiming that they unlawfully restrict the right to travel, have failed.¹¹⁶

Current U.S. law prohibits essentially all economic transactions with Cuba. Moreover, strict U.S. controls on the monies U.S. persons are allowed to take to and spend in Cuba creates an additional burden (beyond the travel and representation obstacles already addressed) for U.S. lawyers who need to travel to Cuba to deliver any custody payments to their Cuban clients.¹¹⁷ These controls present an obstacle even to a parent willing and desirous to meet his or her support obligations with respect to a child in Cuba. Strict legal restrictions exist on remittances allowed to be sent to Cuba from the United States.¹¹⁸ Specifically, the Cuban Asset Control Regulations prohibit travel to Cuba and limit remittances from persons in the United States to citizens in Cuba to not more than \$300 in any

113. *Id.*

114. The Cuban Democracy Act does not specifically provide nor prohibit provision of legal representation to a Cuban national, but does note that licenses are needed for transactions. 22 U.S.C. § 6004(d)(2). Section 6005(d) clarifies applicability of sanctions by noting “[t]he prohibitions [of this section] shall not apply with respect to any activity otherwise permitted by [section 6004 or section 6006 of this title] or any activity which may not be regulated or prohibited under section 5(b)(4) of the Trading With the Enemy Act.” 22 U.S.C. § 6005(d).

115. 31 C.F.R. § 515.560(a) (2003) (detailing the travel-related transactions permitted to/from Cuba — which do not include legal representation); *id.* § 515.560(b) (additional restriction clarifying that “no specific licenses will be issued . . . in connection with activities other than those referenced in paragraph (a)”).

116. *See, e.g.,* Freedom to Travel Campaign v. Newcomb, 82 F.3d 1431 (9th Cir. 1996).

117. Cuban Democracy Act § 6005(c); Cuban Asset Control Regulations, 31 C.F.R. § 515.570.

118. 31 C.F.R. § 515.570.

consecutive three-month period.¹¹⁹ Therefore, even if U.S. courts decided to enforce a Cuban order for child support or alimony, the Cuban Asset Control Regulations would serve as a barrier to actually getting support beyond the allowable limits to the family in Cuba entitled to receive it.¹²⁰

While other barriers may well exist, the few discussed above frame the difficulties that the current state of U.S.-Cuba relations pose to family well-being. U.S. society in general is very supportive of strong family values which includes parents caring for their children, even in the sad context of non-intact families. Similarly, as has been documented in this work, *cubanas/os* in both Cubas have a strong dedication and commitment to *familia*. This commitment certainly should translate to a desire by persons in both Cubas to see that family support obligations are met to ensure family stability and well-being. Perhaps together we can seek changes to the existing relations, laws, and norms to facilitate meeting family and child support obligations. Such a joint project could be a first step in a bridge building endeavor that enables the two Cubas to work together towards the common goal of ensuring the care, health, and happiness of *nuestras familias*.

119. *Id.* § 515.570.

120. *See id.* §§ 515.201(b)1 & 2.

